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April 16, 2007

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: December 22, 2005

Case Number: TSO-0329

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (the individual) for continued access authorization 1/ under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria for Access to Classified Matter or Special Nuclear Material." The individual's access authorization was suspended by one of the Department of Energy's (DOE) Operations Offices. Based on the record before me, I have determined that the individual's access authorization should not be restored at this time.

I. Procedural Background

The individual is employed at a DOE facility where his work requires him to have an access authorization. The local DOE security office issued a Notification Letter to the individual on November 14, 2005. The Notification Letter alleges under 10 C.F.R. § 710.8(j) that the individual has been or is a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse.

The security concerns in the Notification Letter are based on the following factual allegations. The individual has had various alcohol-related incidents including two citations for Minor in Possession of Alcohol, an arrest and charge of Public Intoxication and most recently a charge of Domestic Violence and Battery on a Household Member. In addition, the individual has acknowledged his excessive use of alcohol and that prior to being granted a security clearance he signed and dated a DOE security acknowledgment certifying that he understood that his use of alcohol habitually to excess could result in the loss of his DOE access authorization.

Because of these security concerns, the case was referred for administrative review. The individual filed a request for a hearing on the concerns raised in the Notification Letter. DOE transmitted the

1/ Access authorization is defined as an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material. 10 C.F.R. § 710.5(a).

individual's hearing request to the Office of Hearings and Appeals (OHA), and the OHA Director appointed me as the Hearing Officer in this case.

At the hearing that I convened, the DOE Counsel called one witness, the DOE consultant-psychiatrist. The individual called two witnesses: the individual's Alcoholic Anonymous (AA) sponsor and an Employee Assistance Program (EAP) counselor who administers the alcohol program at the DOE facility where the individual works. The individual also testified on his own behalf. Both the individual and the DOE submitted a number of written exhibits prior to the hearing.

II. Standard of Review

The Hearing Officer's role in this proceeding is to evaluate the evidence presented by the agency and the individual, and to render an opinion based on that evidence. See 10 C.F.R. § 710.27(a). Part 710 generally provides that "[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable or unfavorable, as to whether the granting of access authorization would not endanger the common defense and security and would be clearly consistent with the national interest. Any doubt as to the individual's access authorization eligibility shall be resolved in favor of national security." 10 C.F.R. § 710.7(a). I have considered the following factors in rendering this decision: the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct; the individual's age and maturity at the time of the conduct; the voluntariness of the individual's participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct, the potential for pressure, coercion, exploitation, or duress; the likelihood of continuation or recurrence; and other relevant and material factors. *See* 10 C.F.R. §§ 710.7(c), 710.27(a). The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

When reliable information reasonably tends to establish the validity and significance of substantially derogatory information or facts about an individual, a question is created as to the individual's eligibility for an access authorization. 10 C.F.R. § 710.9(a). The individual must then resolve that question by convincing the DOE that restoring his access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.27(d). In the present case, the individual has not convinced me that restoring his security clearance would not endanger the common defense and would clearly be in the national interest.

III. Findings of Fact

The relevant facts in this case are uncontested. The individual has a history of alcohol consumption and has been involved in four alcohol-related incidents. In 1991, while camping with friends, a Game Warden issued the individual a citation for Minor in Possession of Alcohol. In 1991 or 1992, law enforcement issued the individual another citation for Minor in Possession of Alcohol. At the time, the individual was attending a party where alcohol was available. On January 10, 1999, university campus police arrested and charged the individual with Public Intoxication. According to the record, the individual had consumed six to eight beers and six shots of whiskey before being

arrested. The individual recalls that he blacked out from this drinking episode. Also, on January 16, 2005, a local police department charged the individual with Domestic Violence and Battery on a Household Member. The individual and his wife were intoxicated at the time of the incident.

The last alcohol-related incident prompted the local DOE Security office to conduct a Personnel Security Interview (PSI) on June 9, 2005. In the June 9, 2005 PSI and in an earlier PSI conducted on August 31, 2004, the individual acknowledged that while in college from 1998 to 2000, he became intoxicated almost every time he drank. The individual estimated that in the last five years he has drunk to the point of intoxication 150 times. The individual also acknowledged that he was last intoxicated on June 4, 2005, five days prior to his June 9, 2005 PSI and on August 28, 2004, three days prior to his August 31, 2004 PSI. The last alcohol-related incident also prompted the DOE to refer the individual to a DOE consultant-psychiatrist. The DOE consultant-psychiatrist concluded that the individual suffers from Alcohol Abuse. He further concluded that the individual has not shown adequate evidence of rehabilitation or reformation. The DOE consultant-psychiatrist opined that an outpatient alcohol abuse program of one year's duration, with maintenance of sobriety, would be needed to provide adequate evidence of rehabilitation or reformation.

IV. Analysis

A. Security Concerns Cited Under 10 C.F.R. § 710.8(j)

The Notification Letter states that the individual "has been diagnosed by a psychiatrist . . . as suffering from alcohol abuse." See 10 C.F.R. § 710.8(j). The individual does not challenge that diagnosis and admits that he is an alcoholic. The Notification Letter also states that in a PSI conducted on August 31, 2004, the individual acknowledged that he understood DOE's concern regarding his use of alcohol habitually to excess. In addition, on December 9, 2003, the individual signed and dated a DOE security acknowledgment certifying that he understood that his use of alcohol habitually to excess could result in the loss of his access authorization. Despite these acknowledgments, the individual was charged with his third alcohol-related incident on January 16, 2005.

This derogatory information creates serious security concerns about the individual. In other DOE security clearance proceedings, hearing officers have consistently found that a diagnosis of alcohol abuse raises important security concerns. See, e.g., *Personnel Security Hearing* (Case No. VSO-0079), 25 DOE ¶ 82,803 (1996) (affirmed by OSA, 1996); *Personnel Security Hearing* (Case No. VSO-0042), 25 DOE ¶ 82,771 (1995) (affirmed by OSA, 1996); *Personnel Security Hearing* (Case No. VSO-0014), *aff'd*, *Personnel Security Review*, 25 DOE ¶ 83,002 (1995) (affirmed by OSA, 1995). In this case, the risk is that the individual's excessive use of alcohol might impair his judgment and reliability to the point that he will fail to safeguard classified matter or special nuclear material. I therefore find that the DOE properly invoked Criterion J when it suspended the individual's access authorization.

Since there is reliable derogatory information that creates substantial doubt concerning the individual's continued eligibility for access authorization, I need only consider below whether the

individual has made a showing of mitigating facts and circumstances sufficient to overcome the DOE's security concerns under Criterion J arising from alcohol abuse.

B. Mitigation of Criterion J Concerns

A finding of derogatory information does not end the evaluation of the evidence concerning the individual's eligibility for access authorization. The regulations state that "[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all the relevant information, favorable or unfavorable, as to whether the granting of access authorization would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.7(a). In the present case, the individual maintains that there are mitigating factors that alleviate the agency's security concerns and justify the restoration of his security clearance. In support of his position, the individual states that he has previously had difficulties with his use of alcohol but that those difficulties were based on conditions in his life at the time. Transcript of Hearing (Tr.) at 7. He stated that he was involved in a difficult marriage where both he and his wife were drinkers. Those difficulties intensified when the individual was charged with Domestic Violence and Battery in early 2005. The individual stated that he ultimately separated from his wife in October 2005. However, just prior to his formal separation, the individual testified that he enrolled in an intensive outpatient program to address his problems with alcohol. *Id.* at 11. The individual attended this six-week program three days a week for three hours. *Id.* at 14. He testified that this outpatient program helped him to admit that he is an alcoholic and taught him to abstain from alcohol. *Id.*

The individual further testified that after completing the intensive outpatient program he sought counseling through his employer's EAP from October 2005 through December 2005. He stated that he has sought counseling with another substance abuse counselor as well. The individual further stated that he has participated in AA since December 2005. Tr. at 21. He testified that he initially attended AA twice a week but attends generally once a week now. The individual testified that he has abstained from alcohol since September 2005 and that his future intentions are to continue with AA and to remain abstinent. *Id.* at 24. Although still legally married, the individual states that his life circumstances have changed in such a way that he is no longer vulnerable to alcohol.

The individual also offered the testimony of his AA sponsor and his EAP counselor to further mitigate the agency's security concerns. The AA sponsor testified that he has known the individual for about seven months and has served as the individual's sponsor for about two weeks. Tr. at 83. He further testified that the individual is sincere in his participation and seems to be progressing. The AA sponsor indicated that the individual is in the first couple of steps of AA's twelve-step program and believes it should take the individual "something less than a year" to complete the twelve-step program. *Id.* at 85.

The individual's EAP counselor testified that she met with the individual from October 2005 through December 2005 prior to the individual being placed on administrative leave due to his clearance suspension. During this time period, the EAP counselor testified that the individual was required to submit to alcohol or substance abuse testing and that all of the individual's test results were

negative. Tr. at 108. She further testified that the individual met all of the requirements of the EAP program and was doing well. *Id.* at 110.

C. Expert Testimony

In the administrative process, it is the Hearing Officer who has the responsibility for assessing whether an individual with alcohol problems has presented sufficient evidence of rehabilitation or reformation. See 10 C.F.R. § 710.27. Hearing Officers properly give a great deal of deference to the expert opinions of psychiatrists and other mental health professionals regarding rehabilitation and reformation. See e.g., *Personnel Security Hearing* (Case No. VSO-0027), 25 DOE ¶ 82,764 (1995) (finding of rehabilitation from alcohol abuse under Criteria J); *Personnel Security Hearing* (Case No. VSO-0015), 25 DOE ¶ 82,760 (1995) (finding of no rehabilitation from alcohol abuse under Criteria J). Moreover, it is my responsibility as Hearing Officer to ascertain whether the factual basis underlying the psychiatric diagnosis is accurate, and whether the diagnosis provides sufficient grounds, given all the other information in the record, for the denial of a security clearance. See, e.g., *Personnel Security Hearing* (Case No. VSO-0068), 25 DOE ¶ 82,804 (1996). On the basis of that evaluation, I find that the diagnosis made in the present case has a proper factual basis. I am further persuaded from the testimony of the DOE consultant-psychiatrist that the individual is not yet rehabilitated or reformed and is in need of further alcohol treatment.

The DOE consultant-psychiatrist testified that he evaluated the individual in August 2005. After reviewing the individual's personnel security file, he was concerned that the individual had a number of alcohol-related legal problems, particularly the 2005 domestic violence charge. Tr. at 63, 64. The DOE consultant-psychiatrist conducted an interview with the individual in which the individual provided additional information regarding his alcohol use and history. He also administered laboratory tests including a test which measures the gamma GT liver enzyme level, an enzyme in the liver that is particularly sensitive to elevation when a person is drinking excessively. *Id.* at 67. According to the DOE consultant-psychiatrist, all of the individual's laboratory results were normal. In addition to the laboratory tests, the DOE consultant-psychiatrist administered the Minnesota Multiphasic Personality Inventory (MMPI) (a standard psychological profile) to the individual and his results were within normal limits.

Based on the information gathered, the DOE consultant-psychiatrist concluded that the individual met the criteria set forth in the *Diagnostic and Statistical Manual of Mental Disorders, DSM-IV TR*, for alcohol abuse. He further concluded that at the time of the individual's evaluation there was not adequate evidence of rehabilitation or reformation. *Id.* at 70. The DOE consultant-psychiatrist testified that he was concerned that the individual: (1) stopped drinking after the domestic violence charge but resumed his drinking a couple of months later; (2) had not enrolled in a substance abuse treatment program to help him maintain his sobriety; and (3) did not have a personal concern at that time that alcohol was an issue for him. *Id.* at 71. The DOE consultant-psychiatrist testified to the following: "I think [the individual's] last drink was the night before he saw me. He did kind of make a general statement that he did intend to cut down his drinking, but my impression was that he didn't seem to think he really had an alcohol problem and, therefore, didn't seem to particularly need to get any treatment for it either at that time." *Id.* The DOE consultant-psychiatrist further testified that he

recommended in his report that the individual have at least one year of outpatient treatment, such as AA at least once a week, to achieve adequate evidence of rehabilitation and reformation. *Id.* at 72.

After listening to the testimony at the hearing, particularly the positive steps the individual has taken since his evaluation, the DOE consultant-psychiatrist testified that the individual “has made a good start. He’s got nine months sober, six months in AA, two weeks with a sponsor. The commitment now to his sobriety looks good.” *Id.* at 74. However, the DOE consultant-psychiatrist indicated that he observed several negative factors which usually occur in the early stages of sobriety. First, he testified that the individual is still motivated by external factors, such as the suspension of his clearance, to remain sober. According to the DOE consultant-psychiatrist, “unless it becomes more internally motivated, the prognosis isn’t as good. If the person thinks he, himself, has a problem. . . , that’s a better prognosis that he’s going to keep treatment for that problem.” *Id.* at 75. Second, the DOE consultant-psychiatrist believed the individual blamed his wife for a lot of his alcohol abuse problems which again is common in the early stages of sobriety. Third, the DOE consultant-psychiatrist testified that while the individual is in a good program like AA and has six months of involvement in it, his participation is “just barely okay. I mean, that’s what I mentioned in my report of at least once a week. People that are really gung-ho, for instance, do 90 meetings in 90 days as kind of a classic intro to AA.” *Id.* at 77. In addition, he was concerned that the individual did not know the 12 steps of AA when asked during the hearing. Nevertheless, the DOE consultant-psychiatrist testified that the individual’s AA participation is adequate treatment but that he is in the early stages. *Id.* at 78. He concluded that at this point in time, the individual has still not demonstrated adequate evidence of rehabilitation or reformation and, consistent with his earlier recommendations, the individual requires one year of treatment to be considered rehabilitated or reformed. *Id.* The DOE consultant-psychiatrist reiterated that the individual is on the “right track” and would measure a year by the individual’s sobriety date, stating that the individual is nine months sober. *Id.* at 79.

D. Summary

While I am persuaded that the individual sincerely intends to abstain from alcohol, that he has nine months of sobriety and that he is participating in AA, I am still unable to find that the individual has achieved adequate rehabilitation or reformation at this time. According to the DOE consultant-psychiatrist’s testimony, the individual has not yet achieved an adequate level of rehabilitation or reformation, with only nine months of sobriety at the time of the hearing. The record clearly supports his judgment and conclusion. Consequently, I must find that the individual has not yet overcome the security concerns associated with his use of alcohol. *See Personnel Security Hearing*, Case No. VSO-0359, 28 DOE ¶ 82,768 (2000), *aff’d*, *Personnel Security Review*, 28 DOE ¶ 83,016 (2001); *Personnel Security Hearing*, Case No. TSO-0011, 28 DOE ¶ 82,912 (2003); *cf. Personnel Security Hearing*, Case No. TSO-0001, 28 DOE ¶ 82,911 (2003).

V. Conclusion

As explained in this Decision, I find that the local DOE Security office properly invoked 10 C.F.R. § 710.8(j) in suspending the individual's access authorization. For the reasons I have described above, I find that the individual has failed to sufficiently mitigate the security concerns associated with his use of alcohol. I am therefore unable to find that restoring the individual's access authorization would not endanger the common defense and security and would be consistent with the national interest. Accordingly, I find that the individual's access authorization should not be restored at this time. The individual may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Kimberly Jenkins-Chapman
Hearing Officer
Office of Hearings and Appeals

Date: April 16, 2007